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C O N F I D E N T I A L SECTION 01 OF 04 SARAJEVO 001087

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SUBJECT: BOSNIA - WHERE WE ARE PROSECUTING THE SREBRENICA
GENOCIDE

REF: A. SARAJEVO 234
[1](#)B. 07 SARAJEVO 1533
[1](#)C. 07 SARAJEVO 1503
[1](#)D. 07 SARAJEVO 677
[1](#)E. 07 SARAJEVO 579

Classified By: MICHAEL J. MURPHY. Reasons 1.4(b) and (d).

[1](#)1. (C/NF) SUMMARY: As the thirteenth anniversary of the genocide that took place in and around Srebrenica in July 1995 approaches, we thought it would be useful to review the progress made and the challenges faced by the State Prosecutor's Office Special Department for War Crimes (SDWC) investigating and prosecuting Srebrenica-related war crimes. SDWC's Srebrenica-related work has been under the political microscope since the February 2007 International Court of Justice (ICJ) verdict that elements of the Army of Republika Srpska committed genocide in and around Srebrenica in July [1](#)1995. The OHR-orchestrated departure of former Chief Prosecutor Marinko Jurcevic and the additional resources provided by the international community to SDWC have better positioned SDWC to tackle a burgeoning and challenging Srebrenica caseload. However, the nature of the work and other constraints are likely to prevent SDWC from delivering the kind of quick results expected by Bosniaks and some within the international community. Even with increased public outreach to victims groups designed to explain the challenges associated with war crimes prosecutions, inevitable disappointment in specific, high-profile cases, such as the ongoing Kravica case and the investigation into 35 Republika Srpska police officers on the so-called Srebrenica list, leaves SDWC vulnerable to public criticism that it is doing too little on the Srebrenica-related cases. This provides Bosniak politicians with another avenue for keeping Srebrenica a potential flashpoint for the foreseeable future. Of course, Srebrenica is only one, albeit the largest, of the many war crimes that SDWC's 17 prosecutors are seeking to investigate. Their workload is currently is estimated at 450 case files, which will take years and a significant influx of resources to address. END SUMMARY

Srebrenica Cases Get Additional Attention and Resources

[1](#)2. (C) The February 2007 ICJ verdict that genocide was committed in and around Srebrenica in July 1995 shined the political spotlight on domestic efforts to bring the perpetrators of the genocide to justice. In the wake of the

verdict, there was widespread criticism from victims groups, the Bosniak political leadership and others for what they perceived as a failure by the State Prosecutor's Office to make Srebrenica-related cases a priority, particularly the office's failure to indict anyone from the so-called Srebrenica list. (Note: The list was developed in 2005 and contains the names of over 800 individuals who served in or near Srebrenica in military and non-military capacities between July 10-19, 1995. End Note) SDWC's critics generally possessed little understanding of the complexity of the Srebrenica cases or of the acute resource constraints SDWC was facing. SDWC, in turn, was inward focused and did little to educate the public about its work.

13. (C/NF) The effective removal of former Chief Prosecutor Jurcevic by OHR in February 2008 has given SDWC the latitude to implement the comprehensive prosecutorial strategy it developed over the past year. SDWC has also moved quickly to put in place policies, such as new plea guidelines, that have improved its work. For example, a recent Srebrenica-related plea agreement led to the discovery of three new mass grave sites, which, once excavated, should provide SDWC with valuable evidence it can use in other cases. With financial support from international donors, SDWC has also increased the size of its "Srebrenica Team," which now consists of two international prosecutors, four international investigators, and national staff. These additional resources, some of which have only recently been made available, have enabled SDWC to open an office in Srebrenica, which is used as a staging ground for Srebrenica-related investigations, and an office in Tuzla, which is used to conduct confidential

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interviews with Srebrenica residents and witnesses, including insider witnesses. (Note: SDWC has not publicized the opening of its Tuzla office given how it is used. End Note)

Srebrenica Cases: Complex, Time Consuming and Dangerous

14. (C/NF) SDWC is committed to developing high-quality indictments that have a reasonable prospect of resulting in convictions. The absence of survivors who could serve as witnesses makes their work especially challenging. (Note: Fewer than fifteen Bosniaks survived the genocide. End Note) The Srebrenica Team must rely heavily on confidential informants and on 17 to 18,000 pages of archival information including documents seized by SFOR, radio intercepts, satellite imagery, and information obtained from exhumations of nine primary and 23 secondary mass grave sites to build cases. (Note: Prosecutors have told us that the forensic evidence provided by International Commission for Missing Persons is critical to their work. End Note) All of this makes each investigation time consuming and a high-quality indictment difficult to develop. SDWC's new plea guidelines have helped, but plea agreements are a relatively new concept in Bosnia, which victims groups and others have been reluctant to embrace because they prefer convictions. In addition, investigators, who must often travel to the Eastern RS to pursue their investigations, also continue to operate in a hostile environment. This is particularly true in and around Zvornik where investigators and their staff, particularly Bosniaks, have been regularly subject to verbal and physical intimidation and threats.

Proving and Re-proving Genocide

15. (C) Even though the International Tribunal for the former Yugoslavia (ICTY) and the ICJ established that genocide took place in and around Srebrenica in July 1995, under Bosnian law, in order to convict a defendant with genocide, prosecutors must still prove that genocide occurred and that the defendant knowingly participated in it. Failure to indict, let alone convict, an individual on genocide charges does not preclude an indictment and conviction on lesser

charges, such as "crimes against humanity," but the legal challenges associated with building a genocide case and securing a conviction creates political challenges for SDWC. Victims groups and others generally expect convictions for genocide in Srebrenica-related cases given the ICTY and ICJ rulings. Over the last year, the Prosecutor's Office has increased outreach to victims groups, including the Mothers of Srebrenica, to provide them with a clearer understanding of the legal and other challenges associated with war crimes prosecution. On the other hand, the absence of a genocide charge, or ultimately conviction, in a particular case allows nationalist Serb politicians and RS veterans groups to call into question the established fact that genocide took place in and around Srebrenica.

The Kravica Case

¶6. (C/NF) The Srebrenica Team's most high-profile case involves its prosecution of 11 defendants accused of killing 1,000 men and boys in the Kravica Farming Warehouse Cooperative. All 11 were charged with genocide in 2005, shortly after the State Court began to hear its first war crimes cases. The trial began in May 2006. A first instance panel is expected to render a verdict in the case by August. A well-placed contact in the Prosecutor's Office told us that it is possible that the Court will not convict all 11 defendants in the case, let alone convict all 11 of genocide.

He predicted that if this occurs, it would likely produce a public backlash against both the Prosecutor's Office and the State Court. Though they will not say so publicly, several international prosecutors believe the case was "over-charged" given the available evidence by then Chief Prosecutor Jurcevic because he was under political pressure to secure convictions for genocide. They are concerned about managing inevitable disappointment over the outcome of the Kravica

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case if the Court does not hand down a conviction for genocide.

The Srebrenica List Cases

¶7. (C/NF) The Srebrenica Team has also been investigating 35 active duty RS police officers, whose names appear on the so-called Srebrenica list. RS authorities suspended the 35 (with pay) in July 2007, an action that was coordinated with OHR and then Chief Prosecutor Jurcevic as part of a broader effort to relieve some of the political pressure associated with the fallout from the ICJ verdict. A source in the Prosecutor's Office told us that they anticipate indicting one of the 35 officers in the next several weeks, and that five others are "good candidates" for indictment. Twenty-five of the case files do not contain enough information to warrant an indictment, and the Prosecutor's Office has determined that the remaining case files will not produce indictments at all. The pace of these investigations has moved more slowly than victims groups would like, especially given their view that mere mention on the list is evidence of guilt. Some within the international community are also unhappy with the progress thus far. However, contacts in the Prosecutor's Office maintain that these critics have overstated the legal value of the information provided to them and fail to appreciate the time required for an investigation to produce an indictment that will withstand legal challenge in a court room.

Other Srebrenica Cases

¶8. (C) The Kravica case and Srebrenica list cases are the most prominent Srebrenica-related cases the State Prosecutor's Office is handling, but they are not the only ones. The Prosecutor's Office is also prosecuting four other Srebrenica-related cases involving seven defendants. These

include:

-- Milorad Trbic, an 11bis case that was transferred from the International Criminal Tribunal for the former Yugoslavia to Bosnia, is charged with genocide.

-- Vaso Todorovic is accused of genocide. He was originally charged in connection with the Kravica case, but his case was subsequently separated from the larger case.

-- Zoran Tomic is also accused of genocide, and like Todorovic, he was initially indicted as part of the larger Kravica case only to have his case separated from it later.

-- Zdravko Bozic, Mladen Blagojevic, Zeljko Zaric, and Zoran Zivanovic, who are accused of crimes against humanity. Bozic and Blagojevic were deported from the U.S. in 2006. (Note: SDWC prosecutors told us many war crimes suspects are living abroad, including as many as 150 in the U.S. Most, though not all, are suspected of Srebrenica-related war crimes. If many of these suspects are deported back to Bosnia, they will add significantly to SDWC's already heavy workload. End Note)

Comment

19. (C) Sixteen months after the ICJ verdict, SDWC can point to some progress, much of it stemming from Jurcevic's departure and his replacement by an Acting Chief Prosecutor, Milorad Barasin, who by all accounts is a vast improvement, and to an influx of international support. Unfortunately, some of that progress, such as new prosecution strategies and plea guidelines, though critical to SDWC's success over the long-run, are not visible to, let alone well understood by, victims groups, who understandably tend to measure success solely in terms of convictions. Convictions will take time, more time than many are prepared to accept, and there will inevitably be disappointments. We are encouraging SDWC to continue its public outreach to manage expectations among victims groups. This will not prevent nationalist politicians, particularly Bosniaks, from continuing to exploit the Srebrenica genocide for their narrow political ends, however. Of course, Srebrenica is only one aspect of

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SDWC's work, which is currently estimated at close to 450 case files. This workload is divided among five other regional teams and is presently handled by only 17 prosecutors. Success prosecuting Srebrenica-related war crimes or the myriad other war crimes cases will ultimately require additional resources matched to a national strategy for addressing the war crimes legacy, which is why we pushed so strongly for the Peace Implementation Council to set adoption of such a strategy as one of its rule of law benchmarks.

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